

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3084 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

-----  
G S R T C

Versus

PREMSINH L RATHOD

-----  
Appearance:

MR HARDIK C RAWAL for Petitioner

MR RV DESAI for Respondent No. 1

-----  
CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

-----  
ORAL JUDGEMENT

Heard Mr. Raval, the learned advocate for the petitioner corporation and Mr. Desai, the learned advocate for the respondent. The facts of the present case, in short, are that the respondent was working with the petitioner Corporation as conductor and on 17th August, 1981, while he was on route from Ambaji to Abu, it was found that he had not issued tickets in favour of some passengers and had also not issued tickets to two

passengers though fare was already collected from them. Report to that effect was made against him and after regular departmental inquiry, the competent authority, under order dated 15.12.1982, directed stoppage of five annual increments of the respondent with future effect. The reviewing authority, however, reviewed the entire matter and issued further show cause notice dated 13.6.83 directing the respondent workman to show cause as to why the penalty of dismissal from service should not be imposed. The respondent replied the said show cause notice vide his explanation, and, thereafter, the reviewing authority, under its order dated 6th July, 1983, dismissed the respondent from service. The respondent workman challenged the said action before the labour court, Ahmedabad by filing reference NO. 1628 of 1984. Said reference was referred by the Assistant Commissioner of Labour, Adipur, under his order dated 11th April, 1984. Meanwhile, the respondent workman has also preferred an appeal and the second appellate authority, under its judgment and order directed reinstatement of the respondent workman and the workman was ordered to be placed to the original scale of pay without back wages. The labour court, while adjudicating the dispute in relation to the dismissal dated 6th July, 1983, considered the subsequent decision which was given by the second appellate authority dated 24th July, 1984 and modified the order passed by the second appellate authority by directing the petitioner corporation that instead of putting the respondent in the minimum time scale of the conductor category, whatever salary was received on the date of dismissal by the respondent be restored. Against the said award of the labour court, the petitioner corporation has approached this court by filing this petition under Article 227 of the Constitution of India.

This Court, while admitting this petition, has granted the interim relief as prayed for.

The learned advocate appearing for the petitioner has contended that the labour court has no power to adjudicate the subsequent order dated 24.7.1984 which was passed by the second appellate authority since it was beyond the scope of challenge against the dismissal order dated 6th July, 1983 and the order passed by the second appellate authority was an independent order giving fresh and separate cause of action and, therefore, the directions issued by the labour court are the directions without jurisdiction vested in it and, therefore, the award is required to be set aside. On the other hand, Mr. Desai, the learned advocate appearing for the

respondent workman has submitted that the dismissal order, though set aside by the second appellate authority vide order dated 24.7.1984, is subsequent event in continuation of the earlier order of dismissal and the labour court has power to go into the subsequent event in continuation of the earlier cause of action.

After careful consideration of the submissions made before this court, as per my view, the facts which are required to be examined by the labour court were in relation to the dismissal order in reference No. 1628 of 1984 and the matter was referred to the labour court by the Assistant Commissioner of Labour, Adipur under his communication dated 1.4.84 wherein the dispute was relating to the relief of reinstatement of the workman with continuity of service and with full back wages. It is the settled law that the labour court has power and authority to adjudicate the dispute which has been referred to it by the appropriate authority under section 10 of the Industrial Disputes Act, 1947 and the labour court cannot go beyond the terms of the reference. Therefore, apparently, the order passed by the second appellate authority cannot be said to be the subject matter of the pending reference because it is an independent proceedings wherein a separate order was passed by the second appellate authority on 24.7.1984 and the said order dated 24.7.1984 cannot be said to be incidental to the main dispute which was referred by the Assistant Labour Commissioner Adipur to the labour court under order dated 11.4.1984. Therefore, the labour court ought not to have gone beyond the scope of terms of reference while exercising the powers under sec.10(1) of the Industrial Disputes Act, 1947 and, therefore, the directions issued by the labour court is without jurisdiction and, therefore, the award impugned herein is required to be quashed and set aside by this court. In view of the above observation, the view taken by the labour court is erroneous and contrary to the law settled by the apex Court. Hence the directions issued by the labour court in award dated 9.11.1989 is beyond the scope of terms of the reference and, therefore, same is required to be quashed and set aside. The order passed by the second appellate authority has already been implemented.

Accordingly, this petition is allowed. The impugned award is hereby quashed and set aside. Rule is made absolute accordingly. There shall be no order as to costs.

Before parting, it is clarified that, if the

respondent workman is so advised and is desirous to challenge the order passed by the second appellate authority, it shall be open for him to challenge the same before the appropriate forum in accordance with law and the same shall be decided by the appropriate forum in accordance with law without being influenced by the decision given by this court in this petition. While deciding such thing, the question of delay also shall not be raised by the appropriate forum.

15.10.1999. (H.K.Rathod,J.)

Vyas